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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FCC Communications Commission
Washington, DC 20554

In the Matter of Amendments of Parts 32, 36, 61, 64 and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service	)	DA 93-463/RM-8221

Reply Comments of the Staff of the New Jersey Board of Regulatory Commissioners

The Staff of the New Jersey Board of Regulatory Commissioners (NJ Staff) submits these comments in response to comments made by parties pertaining to the Consumer Federation of America and the National Cable Television Association's petition filed with the Federal Communications Commission (FCC) for "... the commencement of rulemaking proceeding to establish cost allocation rules for video dialtone, and for the establishment of a Federal-State Joint Board to recommend procedures for separating costs."

Of primary importance to the issue of the provisioning of video dialtone (VDT) is the need for the local jurisdictions to be involved in the process in order to define issues of importance to local markets. In the case of the Section 214 applications filed by New Jersey Bell Telephone Company, NJ Staff recommends that these applications be given expedited review subject to any future rules developed to separate revenues and costs. We believe this to be an appropriate course of action for New Jersey because of the unique regulatory climate established therein by the New Jersey Board of Regulatory Commissioners. This is evident by a brief discussion of the events leading up to the decision made by the New Jersey Board of Regulatory Commissioners (Board).

In 1990, the Board commissioned an extensive study (NJ Telecommunications Infrastructure Study) that was aimed at identifying the relationship between telecommunications and New Jersey's future. The study determined that there is a direct causal relationship between an advanced telecommunications infrastructure and economic development. By investing in new and diverse communications services, including voice, data and video services positive benefits will accrue to all areas of our economy, including education, health and entertainment. The conclusions drawn by the study were the impetus for the Telecommunications Act of 1992 (the Act) and as a result, the New Jersey Legislature adopted revised rules for the telecommunications industry. Those rules were signed into law by Governor Florio in January of 1992. Under the Act, local exchange carriers could file for a form of

1) basic residential telephone service will be frozen at current levels through 1999;

2) any increases in rate regulated servcies will be frozen until 1996;

3) changes in rate regulated services will be subject to changes in the GNP-PI indicator less a 2% productivity offset and;

4) NJ Bell would accelerate the deployment of technology.

As evident by these enumerated elements plus others, the Board has taken substantial steps to ensure that New Jersey ratepayers will not be required to pay for system upgrades. The sources for the funds needed to accelerate the deployment of technology will be derived from lower dividends, retained earnings, new services revenues, and new debt offerings. Clearly, the New Jersey Board of Regulatory Commissioners have addressed the heart of the very issue now before the FCC. New Jersey telephone ratepayers will not be subsidizing VDT as implied by some commentors.

We agree, however, that many of the unanswered questions relating to VDT should be addressed. Referral of the issue of separation procedures to a joint board to establish procedures is an advisable mechanism. We would not want to see this issue lost, however, in the joint board maze. If referred to a joint board, a definitive timeframe to resolve the issue must be set, one year should be more than enough time. Without a clear direction on how to proceed with advanced capabilities such as VDT, Local Exchange Carriers (LECs) may delay (or suspend) the upgrade of their networks undermining the future of an advanced telecommunications infrastructure. The NJ Staff believes that it is of paramount importance to allow the scheduled implementation of VDT service in New Jersey to go forward without delay in order to gain experience and insight. Furthermore, the implementation of VDT in New Jersey is ideal; since telephone ratepayers are protected, experience for others will be gained and technical issues resolved. It is only then that a reasonable conclusion can be drawn as to the most appropriate regulatory mechanism for that particular local jurisdiction. Moreover, any attempt to inhibit the development of a VDT instead of traditional rate base, rate of return), historical concerns are not material to New Jersey. The "Rate Shock" that generally accompanies any large plant investment in a rate base, rate of return environment is not a concern in New Jersey. As part of New Jersey Bell's alternate form of regulation, ratepayers of rate regulated services are the beneficiaries of fixed (frozen at current level) rates through 1995. Thereafter, any increases or decreases will be limited to the previous year's GNP-PI less a 2% productivity factor offset. The index-based rate adjustment reflects the inflationary effect on operating expenses and cannot be used as a vehicle to fund the deployment of an advanced network. Residential basic exchange service rates will not be subject to any index based increases through 1999, but may share in rate reductions resulting from the application of the 2% productivity offset to the prior year's GNP-PI. This assures that residential basic telephone rates would not bear any of the burden of additional investment in the advanced network. Increases to other rate regulated services are tied to New Jersey Bell's Return on Equity (ROE). If the ROE exceeds 11.7%, no increases to protected services, such as MTS, touch-tone, non-competitive access services, local service and the ordering, installation and restoration of those services are permitted. Furthermore, if the ROE exceeds 12.7% no increases to rate regulated services are permitted. If a 13.7% ROE is exceeded, all monies above the 13.7% are shared equally between New Jersey Bell and the ratepayers. As an added safeguard, New Jersey Bell is required to submit service quality reports, financial monitoring reports and competitive service data on a quarterly basis as well as infrastracture deployment and depreciation reports annually. The monitoring requirements will assure that the provisions of the Plan and the Telecommunications Act of 1992 are followed throughout the term of the Plan.

The NJ Staff is sensitive to the concerns raised by other commentors and could support the establishment of a Federal-State Joint Board to review the aforementioned issues. It is, however, our contention that the VDT trials, particularly those in New Jersey, should not be delayed. The safeguards included in New Jersey Bell's alternative regulation plan provides New Jersey residents with ample protection from cross-subsidization and may, in conjunction with the information gleaned from the trails, provide the joint board and the FCC with valuable information on which to base rules and procedures regarding VDT services.

Respectfully submitted,

NEW JERSEY BOARD OF
REGULATORY COMMISSIONERS